

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

SETH J. BUTTERFIELD,

Respondent.

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Docket No.: 12-3890-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Debarment dated June 18, 2012 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent SETH J. BUTTERFIELD that HUD was proposing his debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a period of three years from the date of the final determination of this action. The Notice further advised Respondent that his proposed debarment complies with the procedures set forth in 2 C.F.R. parts 180 and 2424.

In addition, the Notice informed Respondent that his proposed debarment was based upon his conviction in the United States District Court for the Northern District of Utah for violating 18 U.S.C. §1012 (Fraudulent Transactions Involving the Department of Housing and Urban Development). Respondent was accused of diverting CDBG funds payable to the city which he served as the Grant Administrator to a company he founded and was employed as its Executive Director. Respondent thus was paid two salaries from HUD CDBG funds. The Notice added that Respondent's actions are evidence of serious irresponsibility and provide cause for debarment pursuant to 2 C.F.R. §§ 180. 800(a)(1), (3), and (4).

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on December 4, 2012, before the Debarring Official's Designee, Mortimer F. Coward. Respondent was present and was represented by Edwin S. Wall, Esq. David R. Scruggs, Esq. appeared on behalf of HUD.

Summary

I have decided, pursuant to 2 C.F.R. part 180, to debar Respondent from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government for a period of two years from the date of this Determination. My decision is based on the administrative record in this matter, which includes the following information:

1. The Notice of Proposed Debarment dated June 18, 2012.
2. Respondent's Response to Notice of Proposed Debarment dated August 28, 2012 (including all exhibits and attachments thereto).
3. Respondent's Pre-Hearing Brief in Opposition of Three-Year Debarment filed November 2, 2012 (including all exhibits and attachments thereto).
4. The Government's Pre-Hearing Brief in Support of Three-Year Debarment filed October 12, 2012 (including all exhibits and attachments thereto).
5. A post-hearing e-mail from Respondent's attorney transmitting documents related to Respondent's medical condition and correspondence between HUD and Layton City, Utah along with a writing from Respondent.

Government Counsel's Arguments

As background information, Government counsel states that Respondent was employed as the Grant Administrator for Layton City, Utah from June 26, 2000 to July 21, 2006, when he resigned. Layton City was a HUD CDBG grantee, permitted under its Agreement with HUD to use up to 20 percent of its grant funds for administrative needs. The city used the permitted maximum plus other city funds to pay Respondent's salary. In January 2002, Respondent established ALLH, a private corporation, with the ostensible mission to provide affordable housing to low- and moderate-income persons. Counsel refers here to Respondent's claim that he created ALLH to replace an existing Community Based Development Organization (CBDO), a recipient of CDBG funds, after being requested to review local CBDO's.

In January 2002, Respondent informed the city that his position as a Board member of ALLH was voluntary and uncompensated. In March 2002, in his position as Grant Administrator, Respondent authorized the disbursement of CDBG funds to ALLH. In July 2002, the city signed a Grant Agreement with ALLH providing for \$18,000.00 to be used to compensate ALLH's Executive Director. All the activities described here occurred while Respondent was Layton's Grant Administrator.

In September 2002, Respondent became ALLH's acting Executive Director at a salary of \$6,000.00 per month. In October 2002, ALLH hired Respondent's company, JEMS, to provide Executive Director services to ALLH. ALLH agreed to pay Respondent, as JEMS subcontractor, for the Executive Director services at a salary of \$6,000.00 per month. From October 2002 until October 2006¹, Respondent simultaneously served as the

¹ Respondent's Response to Notice of Debarment dated August 28, 2012, states that Respondent "resigned from Layton City effective July 21, 2006. Also, on July 7, 2006, [Respondent] resigned as the Executive Director of ALL Home."

city's Grant Administrator and ALLH's Executive Director; both positions were paid from CDBG funds. Counsel contends that, as Grant Administrator, Respondent was in a position to influence the city's selection process for recipients of CDBG funds. And because Respondent simultaneously served as ALLH's Executive Director, "Respondent had an interest in ensuring that ALLH (and, by extension, JEMS and Respondent) continued to receive CDBG funds." Respondent also helped ALLH receive a CDBG Grant Agreement from the city in 2003, 2004, and 2005, respectively.

Counsel argues that Respondent is subject to debarment as a person who was, and may reasonably be expected to be involved in a covered transaction. *See* 2 C.F.R. § 180.120(a). In addition to Respondent's service as a Grant Administrator and Executive Director, Respondent has extensive experience and knowledge in housing and community development, thus making it very likely that he will participate in covered transactions in the future. Counsel adds that, because of Respondent's background, "there is a heightened need to ensure that HUD is protected from future misconduct from Respondent."

Counsel contends that Respondent's conduct that resulted in his conviction for Fraudulent Transactions Involving HUD in violation of 18 U.S.C. § 1012 constitutes commission of "a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction," and provides cause for his debarment under 2 C.F.R. § 180.800(a)(1). Specifically, as Grants Administrator receiving a HUD-funded salary, Respondent was instrumental in having the city award three contracts to his company, ALLH, while simultaneously also receiving a HUD-funded salary as ALLH's Executive Director. Counsel continues that Respondent's criminal misconduct also provides cause for his debarment under 2 C.F.R. § 180.800(a)(4) as it "directly reflects on his character and present responsibility."

Counsel sums up by observing that "[r]espondent's years of concurrent employment by grant provider and grant recipient, and his receipt of HUD grant funds for both of those positions, evince a blatant abuse of public trust [placed in him] by both the City of Layton, which employed him to faithfully carry out its grant activities, and the Federal Government, which depends upon local governments and their employees to conduct the business for which its grant funds were intended with fairness and integrity."

Counsel reviews the aggravating and mitigating factors in 2 C.F.R. § 180.860 as they apply to Respondent's actions and finds that Respondent, while concurrently holding the position of Layton Grant Administrator and ALLH Executive Director, improperly received CDBG funds amounting to \$116,064.00 from contracts that he negotiated. These funds, counsel asserts, could have been spent on worthy community activities that were selected in a process free of taint from Respondent's abuse of the trust placed in him by the city and ALLH. Counsel notes that Respondent engaged in the acts of criminal misconduct discussed here several times over a four-year period. Counsel notes also Respondent's acknowledgment that he engaged in irresponsible conduct, but dismisses Respondent's claim that he did not divert CDBG funds in violation of 18 U.S.C. § 1012 as an impermissible attempt to "attack the underlying facts of his conviction." (Citations omitted)

Respondent planned and initiated the wrongdoing, counsel writes, “intentionally creating ALLH to replace an existing provider of low-and moderate-income housing.” Counsel elaborates that after determining the old CBDO had “problems,” Respondent “set in motion actions resulting in the resignation of the ‘problem’ entity’s board of directors, and Respondent’s creation, in his personal capacity, of ALLH. ALLH soon became the City’s business partner and CDBG funding recipient. Respondent, in his capacity as City Grant Administrator, negotiated and authorized three contracts between the City and ALLH, and, through those contracts, received thousands of dollars in federal funds.” Counsel points out that Respondent has not accepted responsibility for his wrongdoing, citing Respondent’s assertion in his Response to the Notice that his offense “was not a serious offense” and “did not involve a matter of serious irresponsibility.” Counsel adds as other aggravating factors Respondent’s apparent failure to make restitution of \$116,064.00 as ordered by the court in his criminal trial, the executive positions Respondent held in the city and in ALLH, and Respondent’s violation of the conflict of interest provisions of the City of Layton and the State of Utah.

Counsel concludes that based on Respondent’s conviction, the seriousness and the extent of Respondent’s wrongdoing, his lack of integrity and present responsibility, and the aggravating factors discussed above, Respondent’s debarment for three years is warranted.

Respondent’s Arguments

In his introductory remarks, Respondent, through counsel, summarizes the events that led to Respondent’s occupying the position of Executive Director of ALLH while simultaneously serving as the city’s Grant Director. Respondent argues that the issue in this proceeding is whether Respondent’s failure to inform HUD that he occupied the two positions concurrently constitutes “serious irresponsibility” and grounds for debarment. Respondent answers in the negative, asserting that his occupying the two positions “resulted in no fraud, self-dealing or other irregularities” and that his “conduct . . . amounted to a misdemeanor under an obscure federal statutory provision.” Counsel writes that Respondent “was fully accountable and took responsibility for this conduct,” which does not rise to the “level of seriously irresponsible conduct, nor indicative of any potential that in the future he will be irresponsible warranting debarment.” Further, Respondent is making full restitution and there is no evidence of diversion of CDBG funds to Respondent.

Counsel, in reviewing Respondent’s professional background and work experience in more detail along with the events that bear on the issue at hand, notes that ALHH was an “evolutionary process to establish a CBDO that would develop low-and moderate-income housing. It was not an entity that [Respondent] created.” Initially, Respondent sat on the Board of Directors of ALLH as a volunteer on behalf of the mayor. ALLH and the City of Layton entered into a Grant Agreement covering CDBG funds in July 2002 before Respondent assumed the position of Executive Director in September 2002. The Grant Agreement provided for a budgeted amount of up to 25 percent of ALLH overhead, not to exceed \$18,000.00. This meant that \$18,000.00 of the then-Executive Director’s salary of \$72,000.00 would be paid from CDBG funds. When the then-Executive Director was removed and Respondent assumed the position in September, he received the same annual salary of \$72,000.00 paid to the former Executive Director.

Respondent, at the time he was offered the position at ALLH, was serving as the City's Grant Director [sic]. Respondent sought the opinion of the city on the implications of his simultaneously occupying the two positions. In a letter dated September 19, 2002, the day before Respondent agreed to accept the position of Executive Director of ALLH, the Director of Community Development for Layton City wrote ALLH that the city saw "no conflict with [Respondent's] present position [i.e., Grants Administrator] and have no problem with his outside work."

In an arrangement with JEMS, Inc., a company in which Respondent and his wife had an interest, ALLH agreed to pay Respondent's \$72,000.00 annual salary as a subcontractor through JEMS, Inc. Some four years later, in early July 2006, the Layton City Attorney inquired of Respondent whether he was receiving compensation from ALLH. Respondent indicated that he was not, because he was being paid through JEMS, not directly from ALLH. Soon thereafter, Respondent told the City Attorney that he was receiving a salary from ALLH as its Executive Director. On July 7, 2006, Respondent resigned from both positions. Counsel argues that Respondent "did not engage in any fraud, self-dealing or misuse of funds. He simply failed to send HUD a letter telling them he was the Executive Director of All Home."

Counsel, in reviewing the mitigating and aggravating factors in 2 C.F.R. § 180.860, argues that Respondent is presently responsible and that debarment is not necessary in this case because Respondent's conduct, though wrong, was a misdemeanor, not a felony. Respondent has accepted full responsibility for his misconduct, is paying full restitution, and is subject to ongoing supervision during his probation. Counsel states that "[t]here is no need to go further in this civil proceeding than the United States agreed to in the criminal proceedings." According to counsel, "no further sanctions or limitations are necessary to assure continuing responsible conduct."

In addressing some of the factors specifically, counsel emphasizes that, HUD should recognize that "because of [Respondent's] labors the needed homes" were built and "families received the assistance they needed." Additionally, "[a]side from the salary [Respondent] received, no harm occurred [and] ALL Home would have paid the salary to any other Executive Director." Counsel also contends that the City Attorney's determination that no conflict of interest existed, "ameliorated any perception there would be concern on the part of HUD about [Respondent's] work." Counsel notes that although "there was no conflict of interest, . . . , the legal duty to give notice persisted. This legal duty, in the absence of a conflict of interest, is not readily apparent, intuitive, or well known." As a mitigating factor, counsel points to Respondent's history of planning and executing development projects and his steadfast work for the "use of H.U.D. resources for the betterment of the community." Counsel argues that "[t]his factor, as much as any, should be sufficient to conclude debarment is not appropriate or warranted in this case."

Respondent testified that the \$18,000.00 at issue, which represented 25 percent of ALLH's annual overhead per the Grant Agreement, was paid to the previous Executive Director, not to him. Respondent described himself as a problem-solver who can organize win-win solutions. After dodging missiles in Vietnam as a B52 pilot, he knew the value of following rules. Respondent added that he was an economic development officer in four states and was successful in clearing up blighted areas.

Respondent's wife, Jayne Butterfield, also testified. Mrs. Butterfield testified that she formed JEMS in 1996 and it was false to say that Respondent owned JEMS. According to Mrs. Butterfield, Respondent "did not receive a penny of CDBG funds in his salary." The witness offered a summary of the expenditures incurred by JEMS, which, she asserted, exceeded the \$279,000.00 given to JEMS. The witness claimed that Respondent made sure that every entity was paid and he was the only one who was not paid. Respondent, his wife testified, is current in making restitution as ordered by the court. Mrs. Butterfield also disputed that her husband was totally in control of the CDBG activities because he was following the city's action plan. Additionally, according to the witness, every activity Respondent was engaged in that involved CDBG funds was subject to a ten-day review process by the mayor and others. Respondent did not have total control. The witness concluded her testimony by asserting that Respondent was owed in excess of \$300,000.00 for the work he had done.

Findings of Fact

1. Respondent was at all relevant times the Grant Administrator of Layton City, a HUD CDBG grantee, while concurrently holding the position of Executive Director of ALLH, a private corporation, established by Respondent in January 2002.
2. In his position as the city's Grant Administrator, Respondent had authority over and assisted the city with land acquisition using CDBG funds and execution of contracts for the use of CDBG funds.
3. Prior to assuming his position as acting Executive Director of ALLH, Respondent, in March 2002, authorized the disbursement of CDBG funds to ALLH.
4. In July 2002, the city signed a Grant Agreement with ALLH providing for \$18,000.00 to be used to compensate ALLH's Executive Director.
5. In September 2002, Respondent became ALLH's Executive Director at a salary of \$6,000.00 per month, the same salary paid to the former Executive Director.
6. In October 2002, ALLH hired JEMS, a company owned and controlled by Respondent and his wife, to provide Executive Director services to ALLH.
7. ALLH agreed to pay Respondent, as JEMS subcontractor, for the Executive Director services at a salary of \$6,000.00 per month.
8. From October 2002 until July 2006, Respondent held, at the same time, the positions of City Grant Administrator and Executive Director of ALLH, and was compensated for both positions from CDBG funds.
9. At all relevant times, HUD regulations, Utah state law, and Layton City policy each prohibited the Grant Administrator from having a conflict of interest, including holding a paid position with any entity receiving CDBG funds, without the express permission and authorization of HUD and Layton City.
10. When Respondent resigned from ALLH's Board of Directors and became its acting Executive Director on September 20, 2002, Layton City granted Respondent on September 19, 2002, a written waiver of any conflict of interest.

11. As Grant Administrator and ALLH's Executive Director, Respondent negotiated and authorized three contracts between Layton City and ALLH to build low-income housing in 2003, 2004, and 2005, resulting in ALLH's receiving CDBG funds.
12. Respondent received \$116,064.00 from the contracts he negotiated.
13. Respondent acknowledges that his actions and simultaneous service to ALLH and the City of Layton resulted in a conflict of interest.
14. In July 2006, Respondent, in response to an inquiry from the city attorney whether he was receiving compensation from ALLH, denied that he was, but very soon thereafter admitted to the City Attorney that he was receiving a salary from ALLH as its Executive Director.
15. Respondent's efforts and expertise in economic development contributed to the much-needed construction of housing for low-and moderate-income persons.
16. Respondent pleaded guilty and was convicted of violating 18 U.S.C. § 1012 (Fraudulent Transactions Involving the Department of Housing and Urban Development).
17. Respondent was sentenced to 36 months' probation and ordered to make restitution of \$116,064.00.
18. There is no evidence that Respondent has a history of prior wrongdoing.

Conclusions

Based on the above Findings of Fact, I have made the following conclusions:

1. As a former Administrator of Layton City's Block Grant Program and Executive Director of ALLH, an entity that received CDBG funds, Respondent is subject to the debarment regulations as a "person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction." 2 CFR § 120(a). *See also*, 2 C.F.R §§ 180.200, 180.980 and 180.995.
2. Respondent's conviction for committing Fraudulent Acts Involving the Department of Housing and Urban Development provides cause for his debarment pursuant to 2 CFR §§ 180.800(a)(1) and (a)(4).
3. Respondent's argument that his conviction of a misdemeanor, and not of a major felony, demonstrates that his criminal wrongdoing was not indicative of "seriously irresponsible conduct," thus making 2 CFR § 180.800(a)(1) inapplicable in censuring his conduct, is neither well founded nor effective in immunizing him from the reach of the regulation. The offense to which Respondent pleaded guilty involved, as the very name of the statute indicates, fraudulent activity.² More

² Respondent originally was charged in a six-count indictment with committing several felonies. Respondent later waived prosecution by indictment, consenting that the case may proceed by way of an Information. *See* Gov't Exs. 6 Indictment and 8 Waiver of Indictment. The Indictment is referred to here only for the limited purpose of referencing one of the factual allegations against Respondent that "[i]t was the object of the scheme and artifice to defraud for [Respondent] to authorize CDBG funding for and receive compensation from ALLH, in violation of conflict of interest prohibitions established by HUD regulations, Utah state law, and Layton City."

critically, the regulation does not distinguish between a conviction for a felony as opposed to a conviction for a misdemeanor. To be sure, the more serious the misconduct, the more likely that a longer period of exclusion may be imposed. *See, e.g.*, 2 C.F.R. § 180.865. (“Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.”) Nonetheless, the regulation at 2 C.F.R. § 180.800 (a)(1) is neutral on its face regarding the degree or gravity of the charged offense that is covered thereunder.

4. Accordingly, Respondent’s misconduct falls squarely within the plain language of the regulation without regard to whether the offense he committed and for which he was convicted was a misdemeanor or a felony. *See In the Matter of Larry W. Smith*, HUDBCA No. 81-620-D32, 1981 HUD BCA Lexis 59 (September 14, 1981), a case in which the respondents, two mortgage bankers, were charged by information and pleaded guilty to knowingly and unlawfully accepting fee overpayments of \$63.00 and \$55.50. The Government proposed their debarment under the predecessor regulations to 2 C.F.R. §§ 180.800(a)(1) and (a)(4). (*see* 24 C.F.R. §§(6)(a)(1) and (9) (1981)). The Administrative Judge, in assessing Respondents’ misconduct, held that “[s]uch misconduct reflects an underlying lack of integrity that is incompatible with the concept of public trust, **regardless of the amounts involved or whether the offenses are termed felonies or misdemeanors.**” (Emphasis added) Accordingly, as the above discussion makes plain, there is no support in the law for Respondent’s view that his conduct was not “seriously irresponsible” because it resulted in his conviction for committing a misdemeanor, not for committing a felony. *In the Matter of Nicholas D’Andrea*, 1980 HUD BCA Lexis 13 (July 22, 1980) supports the proposition that the law regards matters involving fraud, especially fraudulent acts involving Government funds as in the cited case, as a “very serious offense.”
5. Respondent’s attempt to minimize the vice in his actions by characterizing the issue for resolution as “whether [his] failure to send a written notice to H.U.D.” that he held the two salaried positions at issue in this proceeding concurrently “constitutes ‘serious irresponsibility’” also is unavailing. First, the Information to which Respondent pleaded guilty did not limit the charge, as Respondent would like to do in framing the putative issue as recited here.. *See* Gov’t Ex. 7. Similar attempts by Respondents have been dismissed as “not persuasive [because] their admissions of guilt are a matter of record and may be taken at face value [and] the conviction constitutes per se cause for debarment under Part 24 regulations [24 C.F.R. part 24, the predecessor to the current debarment regulations].” *In the Matter of Larry W. Smith*, HUDBCA No. 81-620-D32 1981 HUD BCA Lexis 59 (September 14, 1981).
6. Additionally, Respondent’s view of the issue as simply his inadvertent failure to inform HUD of his two paid positions, if successful, would be tantamount to allowing a collateral attack on his conviction. Such an attack is impermissible in this forum. *See In the Matter of Wayne D.*

- Turner*, HUDBCA No. 91-5903-D49, 1993 HUD BCA Lexis 6 (a respondent convicted of a criminal offense may not “collaterally attack his conviction in [a debarment] proceeding.”).
7. The Information to which Respondent pleaded guilty states, *inter alia*, that Respondent “willfully failed to disclose benefits which he expected to receive as a result” of his inducing or influencing HUD to enter into contracts. Similar conduct to Respondent’s, where the respondent, an employee of a housing authority, pleaded guilty to fraud and concealment of a material fact within HUD’s jurisdiction, was described as “a serious breach of the public trust. [It] reflect[s] a manifest lack of business responsibility from which an inference of a lack of present responsibility may be drawn. . . . [C]onviction of offenses of such character provides ample cause for [Respondent’s] debarment for a substantial period.” *In the Matter of Marvin B. Awaya*, HUDBCA No. 84-834-D6, HUD BCA LEXIS 50 (May 8, 1984). The court’s pronouncements in the Awaya case apply in the instant matter and justifies Respondent’s debarment.
 8. The courts have held that debarment is a sanction that may be invoked by HUD as a measure of protecting the public by ensuring only those qualified as “responsible” are allowed to participate in HUD programs. *In re. Buckeye Terminix Co., Inc.*, citing *Stanko Packing Co. v. Bergland*, 489 F. Supp. 947, 949 (D.D.C. 1980) and *Roemer v. Hoffman*, 419 F. Supp. 130, 131 (D.D.C. 1976). “Although the test for debarment is whether [Respondent] is presently responsible, a lack of present responsibility may be inferred from past acts.” *Awaya*, *supra* (citations omitted). See also *In Re Buckeye Terminix Co., Inc.*, UDALJ 89-1402-DB (August 31, 1990), holding that “Responsibility encompasses the projected risk of a person doing business with HUD. This includes his integrity, honesty, and ability to perform. The primary test for debarment is present responsibility although a finding of present lack of responsibility can be based upon past acts.”
 9. The regulations provide at 2 CFR 180.150 that “[g]iven a cause that justifies an exclusion under this part, a Federal agency may exclude any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.” In the instant matter, the cause that justifies Respondent’s exclusion is his criminal conviction.
 10. HUD has established a cause for Respondent’s debarment by a preponderance of the evidence based upon Respondent’s criminal conviction. See 2 C.F.R. § 180.850.
 11. As provided in 2 C.F.R. § 180.845(a), “[t]he debarring official may debar you for any of the reasons in § 180.800. However, the official may not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth in § 180.860.”

12. Pursuant to 2 C.F.R. § 180.860, the following aggravating factors were considered in considering an appropriate period of debarment: The actual or potential harm that Respondent's actions may have caused to the integrity of the CDBG program; Respondent's singular role in devising and carrying out the scheme that allowed him to receive two salaries simultaneously, both of which were funded, in part, by CDBG funds; the fact that Respondent was clearly aware, based on his experience and undoubted knowledge of the conflict of interest provisions in the Grant Agreements, HUD's regulations, and state and local law, that holding the two positions at the same time presented a clear conflict of interest; Respondent's betrayal of the trust bestowed on him in the two executive positions at issue here; and Respondent's continued reluctance to recognize the seriousness of his misconduct; and the fact that Respondent engaged in the irresponsible conduct for four years. As mitigating factors, I considered Respondent's contributions to his community in the field of economic and community development; the fact that Respondent, though acting improperly in occupying the two positions, was able to provide low- and moderate-income families with affordable housing; the fact that there is no evidence of prior wrongdoing by Respondent; the length of time that has elapsed, more than six years, since Respondent engaged in his misconduct; the fact that Respondent is now a man of advanced years and from the medical records submitted apparently in declining health, thus casting doubt on his ability to return to his professional activities; and the fact that Respondent remains on supervised probation for at least another 18 months. One of the conditions of Respondent's probation is a requirement that he give his probation officer 'complete access to all business and personal financial information.' I considered the fact that the city advised Respondent when he inquired that there was no conflict in his holding the Grant Administrator position and engaging in outside activities. Because it is not clear that the Director who issued the letter was referring not just to Respondent's acting as the Executive Director for a short while, as seems likely, as opposed to his permanently occupying the Executive Director position of ALLH as a paid employee, the letter's mitigating effect is limited. Respondent had previously in January 2002 informed the city that his position at ALLH was voluntary and uncompensated. The letter's effect is negative also by the fact that a city official is powerless to waive HUD's regulations, even if the letter is viewed in the light most favorable to Respondent.
13. Based on a weighing of the factors recited above, I find that Respondent is not presently responsible and that a period of exclusion is necessary "to protect the public interest." 2 C.F.R. § 180.125(a) and (b). The duration of the debarment should be the minimum necessary to insure that risk to the government program is by insuring that [participants act] . . . with the highest degree of honesty and integrity. The period should be long enough to demonstrate that the government takes the conduct at issue seriously . . . until [a participant has] had sufficient time to reflect on their cause for their debarment and to

conform their conduct to the standard of present responsibility.” *See In re Richard Duane Wilder*, HUDALJ 92-1766-DB, 1992-HU-ALJ-LEXIS 59 (June 18, 1992).

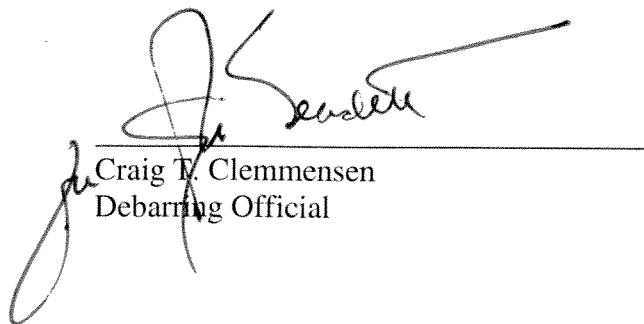
14. Respondent’s assertion that this proceeding is unnecessary in light of his criminal prosecution misapprehends the purpose of a debarment action. As the court held in *Widler, supra* “[t]he punitive effect of a criminal sentence has no relevance per se to the remedial purpose of debarment; i.e., to protect government interests not otherwise protected.”
15. Respondent’s actions described here raise grave doubts with respect to his business integrity and personal honesty.
16. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
17. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 C.F.R. §§ 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a period of two years from the date of this Determination. Respondent’s “debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 C.F.R. chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.”

Dated: _____

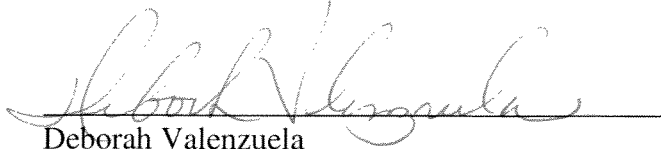
1-17-13



Craig T. Clemmensen
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 17TH day of January 2013, a true copy of the DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.

A handwritten signature in cursive script, appearing to read "Deborah Valenzuela", written over a horizontal line.

Deborah Valenzuela
Debarment Docket Clerk
Departmental Enforcement Center (Operations)

HAND-CARRIED

Mortimer F. Coward, Esq.
Debarring Official's Designee

David R. Scruggs, Esq.
Melissa B. Silverman, Esq.
Ana I. Fabregas, Esq.
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